

## **STAFF REPORT**

**AGENDA ITEM:** Legislation Update

**STAFF:** Tricia Gill, OHMVR Division

**DATE:** December 1, 2011

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### **BACKGROUND: CALIFORNIA LEGISLATION UPDATE**

California's legislative session ended on September 9, 2011. Barring a special session the Assembly and Senate will return January 4, 2012. The final day for Governor Brown to sign or veto any bills passed out of the Legislature this year was October 9, 2011.

### **DISCUSSION**

Legislation related to California State Parks and renewable energy was reviewed at the previous Commission meeting and a summary of their status was given. At this point, the only bills pending from that report are SB 356 and SB 386, related to state parks operating agreements and state parks proposed closure notifications. These bills were vetoed by the Governor. The bills are now back in the Senate; consideration of the Governor's veto is pending.

No further updates are available at this time.

### **BACKGROUND: FEDERAL LEGISLATION UPDATE**

The first session of the 112<sup>th</sup> United States Congress convened on January 3, 2011, and will end on January 3, 2013. The OHMVR Division continues to monitor relevant federal bills as the session progresses. Updates will be provided as bills are introduced and/or updates occur.

### **DISCUSSION**

There has been no changes to the status of the Federal bills listed in the October 14 Commission meeting Legislation Update. The bills listed in that update are carried over to this report for your reference. In addition, several relevant bills have been added to this Legislation Update for your consideration: H.R. 41, H.R. 113, H.R. 1996, and H.R. 2852. A summary of these bills are listed below.

**H.R. 242: To clarify the implementation and enforcement of Subpart B of the Travel Management Rule relating to the designation of roads, trails, and areas for motor vehicular use, in administrative units of the National Forest System in California, and for other purposes (Herger, R-CA).**

**Status:** 1/26/2011 – Referred to the House Committee on Natural Resources on 1/7/2011. Referred to the Subcommittee on National Parks, Forests, and Public Lands on 1/26/2011.

**Summary:** The purposes of this bill is to clarify the implementation and enforcement of Subpart B of the Travel Management Rule (36 C.F.R. 212), relating to the designation of roads, trails, and areas for motor vehicle use, in administrative units of the National Forest System in California, and for other purposes.

**\* No changes have occurred as of the October 14 Commission meeting.**

**H.R. 848: Requires the U.S. Forest Service to accommodate, to the extent consistent with the management objectives and limitations applicable to the National Forest System lands at issue, individuals with mobility disabilities who need to use a power-driven mobility device for reasonable access to such lands (Alexander, R-LA).**

**Status:** 3/9/2011 - Referred to the Committee on Agriculture and the Committee on Natural Resources. The bill was then referred to the Subcommittee on National Parks, Forests, and Public lands on 3/3/2011 and the Subcommittee on Conservation, Energy, and Forestry on 3/9/2011.

**Summary:** Directs the Secretary of Agriculture (USDA), through the Chief of the Forest Service, to require Forest Service personnel, in the implementation of off-road vehicle management under the Forest Service Travel Management Rule, to endeavor to accommodate individuals with mobility disabilities who would need to use a power-driven mobility device for access to such lands.

**\* No changes have occurred as of the October 14 Commission meeting.**

**H.R. 1581 / S. 1087: Wilderness and Roadless Area Release Act of 2011 (McCarthy, R-CA) / (Barrasso, R-WY)**

**Status - H.R. 1581:** 7/26/2011 – Referred to the Committee on Natural Resources and the Committee on Agriculture. The bill was then referred to the Subcommittee on National Parks, Forests, and Public Lands on 4/22/2011. A subcommittee hearing was held on July 26, 2011. The bill was also referred to the Subcommittee on Conservation, Energy, and Forestry on 5/11/2011.

**Status - S. 1087:** 5/26/2011 - This bill was read twice and referred to the Committee on Energy and Natural Resources.

**Summary:** This bill would release all Wilderness Study Areas and Inventoried Roadless Areas, which have been recommended as not suitable for wilderness by the Bureau of Land Management or the U.S. Forest Service, and direct that they be managed for multiple use. This legislation would terminate Secretarial Order 3310 and prohibit the Interior Secretary from issuing a national regulation or directive that directs how released lands will be managed. This bill would release roadless areas within the National Forest System, which have been recommended as not suitable for a wilderness designation by the U.S. Forest Service. This legislation would also terminate the 2001 Roadless Area Conservation Rule and the 2005 State Petition Rule, and prohibit the Agriculture Secretary from issuing a national regulation or directive that directs how released roadless areas will be managed.

**\* No changes have occurred as of the October 14 Commission meeting.**

**H.R. 1996 / S. 1061: Government Litigation Savings Act (Lumis, R-WY)  
(Barrasso, R-WY)**

**Status:** 11/17/2011 – Referred to the House Committee on Judiciary. Referred to the Subcommittee on Courts, Commercial, and Administrative Law. Subcommittee hearings were held on October 11, 2011. H.R. 1996 passed out of the House Judiciary Committee mark-up on November 17, 2011.

**Summary:** The Government Litigation Savings Act revises provisions of the Equal Access to Justice Act relating to the fees and other expenses of parties court cases against the federal government to: (1) restrict awards of fees and other expenses under such Act to prevailing parties with a direct and personal monetary interest in an adjudication, including because of personal injury, property damage, or an unpaid agency disbursement; (2) require the reduction or denial of awards commensurate with pro bono hours and related fees and expenses to parties who have acted in an obdurate, dilatory, mendacious, or oppressive manner or in bad faith; (3) limit awards to not more than \$200,000 in any single adversary adjudication or for more than three adversary adjudications in the same calendar year (unless the adjudicating officer or judge determines that a higher award is required to avoid severe and unjust harm to the prevailing party); and (4) expand the reporting requirements of the Chairman of the Administrative Conference of the United States with respect to fees and other expenses awarded to prevailing parties during the preceding fiscal year. This bill would also require the Comptroller General to audit the implementation of EAJA for the years 1995 through the end of the calendar year in which this Act is enacted.

**H.R. 2852 / S. 1524: Action Plan for Public Lands and Education Act of 2011  
(Bishop, R-UT) / (Hatch, R-UT)**

**H.R. 2852 - Status:** 9/22/2011 - Referred to the House Committee on Natural Resources. Referred to the Subcommittee on Energy and Mineral Resources and the Subcommittee on National Parks, Forests, and Public Lands. National Parks, Forests, and Public Lands Subcommittee hearings were held on September 22, 2011.

**S. 1524 - Status:** 9/8/11 - Referred to Senate Committee. Read twice and referred to the Committee on Energy and Natural Resources.

**Summary:** These bills make grants of land to the following western states in lieu of receiving, for the support of the common schools, 5 percent of the proceeds of the sales of federally owned land within such states which have not been sold by the United States as of January 1, 2011: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

These bills also makes the amount of land granted to each state 5 percent of the number of acres of federally owned land within that state as of January 1, 2011. The bills require land selected to be held in trust to be sold or leased and the proceeds to be used only for the support of public education.

**Department of Interior's position:** The Department strongly opposes HR 2852 for a number of reasons. Following is an excerpt from the Department's Subcommittee testimony.

If H.R. 2852 were enacted, Americans would lose not only the monetary benefits but also the immeasurable benefits that can come from lands managed for the enjoyment of and use by all Americans. These include big and small game hunting opportunities, wildlife viewing, and a broad range of recreation opportunities from backpacking and camping to the use of OHV's on remote trails to sand rails on the sand dunes.

Additionally, the public could lose forever the rich historical and archeological diversity of the public lands, unbroken expanses of wildlife habitat, as well the rural West's contribution to the nation's culture. Our public lands should be managed for the public good and be held for the benefit of future generations.

## **H.R. 2584: Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012 (Simpson, R-ID)**

**Status:** 7/28/2011 - Reported out of House Appropriations Committee. Work on the bill stalled during consideration of more than 185 separate amendments when the House broke for August recess; this bill was left as unfinished business.

**Summary:** This bill makes appropriations for the Department of the Interior, Environment, and related agencies for the fiscal year ending September 30, 2012, and for other purposes. The bill includes many amendments to de-fund Administration, environmental, and public land priorities. Amendments include provisions that would not allow relevant agencies to expend funds to implement: 1) BLM's "Wild Lands" policy; 2) continuation of the USFS's Travel Management Rule in California; and 3) the EPA's greenhouse gas rules.

**\* No changes have occurred as of the October 14 Commission meeting.**

## **FEDERAL LEGISLATION: WILDERNESS DESIGNATIONS**

Congress established the wilderness designation for public lands in the Wilderness Act of 1964. When Congress designates each wilderness area, it includes a very specific boundary line in statutory law. Once a wilderness area has been added to the System, its protection and boundary can only be altered by another act of Congress. Wilderness designations limit uses to those consistent with the Wilderness Act mandate that each wilderness area be administered to preserve the "wilderness character of the area." Additionally, the Act outlines that within designated wilderness areas, there shall be no temporary (or permanent) road, no use of motor vehicles, motorized equipment or other form of mechanized transport, and no structure or installation within any such area.

The following bills related to wilderness designations are pending.

## **S 138: California Desert Protection Act of 2011 (Feinstein D-CA)**

**Status:** 1/25/2011 –Referred to the Senate Committee. Read twice and referred to the Committee on Energy and Natural Resources.

**Summary:** Amends the California Desert Protection Act of 1994 to, among other things: (1) establish or designate national monuments, wilderness areas, a special management area, and off-highway vehicle recreation areas; (2) release specified wilderness study areas; (3) adjust national park and preserve boundaries; and (4) specify land withdrawals, exchanges, and acquisitions. Also amends the Wild and Scenic Rivers Act to designate specified segments of rivers and creeks as components of the National Wild and Scenic Rivers System.

**\* No changes have occurred as of the October 14 Commission meeting.**

## **H.R. 41: Beauty Mountain and Agua Tibia Wilderness Act of 2011 (Issa, R-CA)**

**Status:** 10/25/2011 – Referred to the House Committee on Natural Resources.  
Referred to the Subcommittee on National Parks, Forests, and Public Lands.  
Subcommittee hearings were held on October 25, 2011.

**Summary:** This bill designates approximately 7,796 acres of land in the Cleveland National Forest, in San Diego County, as wilderness and incorporates them into the Agua Tibia Wilderness. In addition, this bill designates approximately 13,635 acres of land managed by the BLM in San Diego County as wilderness and incorporates them into the Beauty Mountain Wilderness. This bill also prescribes where the development of recreational facilities will be.

## **H.R. 113: Angeles and San Bernardino National Forests Protection Act (Dreier, R-CA)**

**Status:** 10/25/2011 – Referred to the House Committee on Natural Resources.  
Referred to the Subcommittee on National Parks, Forests, and Public Lands.  
Subcommittee hearings were held on October 25, 2011.

**Summary:** This bill expands current wilderness areas by designating approximately 72,000 acres of National Forest land in California as wilderness. The Act incorporates specified proposed wilderness additions into the Cucamonga and Sheep Mountain Wilderness Areas in the Angeles and San Bernardino National Forests in California and sets forth provisions regarding private property and water rights protections and permissible activities in such additions. The Act also authorizes the Secretary of Agriculture to take such measures in the Cucamonga, Sheep Mountain, and San Gabriel Wilderness Areas that are necessary for the control of fire, insects, and diseases; directs the Secretary to assess a specified maintenance backlog in the Angeles and San Bernardino National Forests; and requires completion of studies regarding the potential addition of portions of the San Gabriel River, San Antonio Creek, and Middle Fork Lytle Creek in California to the national wild and scenic rivers system.

## **FEDERAL LEGISLATION: NATIONAL MONUMENTS**

The Antiquities Act of 1906 grants the President unilateral authority to designate areas of public lands as National Monuments. Presidential establishment of national monuments under the Antiquities Act of 1906 has protected valuable sites, but also has been contentious. The establishment of national monuments by Presidents has raised concern including the authority of the President to create large monuments; impact on development within monuments and access to monuments for recreation; and lack of requirement for environmental studies and public input in the monument designation process.

The following bills related to National Monuments are currently pending.

**H.R. 302 / S. 122: Preserve Land Freedom For Americans Act of 2011 (Foxx, R-NC) / (Vitter, R-LA)**

**H.R. 302: Status:** 9/13/2011 - House Committee on Natural Resources: Referred to the Subcommittee on National Parks, Forests, and Public Lands. Subcommittee hearings were held on 9/13/2011.

**S. 122: Status:** 1/25/2011 - Read twice and referred to the Committee on Energy and Natural Resources.

**Summary:** Requires the President, prior to designating a national monument, to obtain a state's approval for a monument located on federal land within the state. Bars the Secretary of the Interior from implementing any restrictions on the public use of a national monument until the expiration of an appropriate review period providing for public input and state approval.

**\* No changes have occurred as of the October 14 Commission meeting.**

**H.R. 758 / S. 407: National Monument Designation Transparency and Accountability Act (Nunes, R-CA)**

**Status:** 9/13/2011 – Referred to the House Committee on Natural Resources on 2/17/2011. Referred to the Subcommittee on National Parks, Forests, and Public Lands on 2/22/2011. Subcommittee hearings were held 9/13/2011.

**Summary:** Requires land reserved as part of a national monument to be confined to the smallest area essential to ensure proper care and management. Bars President from issuing a proclamation to designate a national monument before end of a 30-day period beginning when language of the proposed proclamation is provided by President to Congress, Governor of each state, and specified local and tribal government officials having jurisdiction over land within proposed monument. Requires at least one public hearing and notice and comment period after issuance of a proclamation to designate a national monument. Requires President to report to Congress on any hearings held, any written comments received, and impact of such designation on communities within monument boundaries, the nation's energy security, and interests, rights, and uses associated with the land within the monument. Makes a Monument proclamation ineffective 2 years following its issuance, unless approved by an Act of Congress.

**\* No changes have occurred as of the October 14 Commission meeting.**

**S. 407: National Monument Designation Transparency and Accountability Act of 2011 (Crapo, R-ID)**

**Status:** 2/17/2011 - Read twice and referred to the Committee on Energy and Natural Resources.

**Summary:** Amends the Antiquities Act of 1906 to require land reserved as part of a national monument to be confined to the smallest area necessary to ensure the proper care and management of the objects to be protected by the monument. Sets forth requirements for the designation of national monuments under the Act.

**\* No changes have occurred as of the October 14 Commission meeting.**

**H.R. 817: To amend the Antiquities Act of 1906 to place additional requirements on the establishment of national monuments under that Act, and for other purposes (Herger, R-CA)**

**Status:** 9/13/2011 – Referred to the House Committee on Natural Resources. Subcommittee on National Parks, Forests, and Public Lands heard on 9/13/2011.

**Summary:** Amends the Antiquities Act of 1906 to require, in addition to a presidential declaration, congressional approval prior to the establishment of a national monument. Prohibits the further extension or establishment of national monuments in California except by express authorization of Congress.

**\* No changes have occurred as of the October 14 Commission meeting.**

**COMMISSION ACTION:** For informational purposes only. No action is required.